

**CITY OF BELDING, MICHIGAN
ORDINANCE NO. 553**

AN ORDINANCE TO AMEND CHAPTER 34 OF THE CITY CODE BY ADDING ARTICLE VI THERETO, TO ESTABLISH AIR POLLUTION CONTROL STANDARDS FOR THE USE OF A CERTAIN HAZARDOUS CHEMICAL AND TO PROVIDE A PENALTY FOR VIOLATIONS OF THE ORDINANCE

THE CITY OF BELDING ORDAINS:

Section 1. Chapter 34 (“Environment”) of the Code of Ordinances of the City of Belding is hereby amended by the addition of Article VI thereto, which shall read in its entirety as follows:

ARTICLE VI. – AIR POLLUTION CONTROL

Sec. 34-102. – Purpose and Findings

The City Council of the City of Belding hereby finds and declares that special air pollution control standards are needed in the City to address a unique problem of local concern, involving the use of a certain chlorine-containing, hazardous chemical in the City’s I-1 Industrial District that has the potential to release toxic chlorine gas to the atmosphere in quantities that could be lethal to large numbers of nearby residential populations. In support of the need for a special local ordinance addressing this problem, the City Council makes and adopts the following findings of fact:

- (a) There have been at least seven prior instances during which the hazardous chemical compound known as trichloroisocyanuric acid (“TCICA”) has been handled in a dangerous, negligent and otherwise unlawful manner on lands in the I-1 District, resulting in either smoldering chemical reactions or fires, and consequent releases of dangerous and/or toxic gases to the atmosphere.
- (b) These incidents have required that the City repeatedly deploy emergency service personnel to the site of the releases, at significant cost to the City and its taxpayers.
- (c) These incidents have resulted in the issuance of “shelter in place” orders for nearby residents, and nearby residents have reported adverse health effects resulting from the exposure to released hazardous gases, including burning skin and respiratory irritation.
- (d) The use and/or storage of TCICA in the City, including in the I-1 District in particular, is uniquely and highly dangerous because the I-1 District is located nearly in the middle of the City’s primary residential zoning district; it is located less than 200 feet from single-family homes; and, is located just to the west/southwest of the City’s most densely populated residential area, so that it is situated directly upwind from the City’s core residential area, based on the prevailing westerly winds.

- (e) The U.S. Environmental Protection Agency ("US EPA") has commissioned an air modeling and risk assessment report, using the Interagency Modeling and Atmospheric Assessment Center ("IMAAC"), to analyze the impacts of a complete decomposition of the quantities of TCICA that have been stored by just one manufacturing facility in the I-1 District. The principal findings of the EPA-commissioned IMAAC report include the following:
 - (1) If the full amount of TCICA at just one facility was to decompose in a reaction with water and other agents, it would result in a fire that would release nearly 25,000 kilograms of chlorine gas.
 - (2) Anywhere from 136 to 470 persons could be killed by the inhalation of chlorine gas during such a fire, and anywhere from 1,816 to 3,030 additional persons would suffer serious injuries.
- (f) Investigations conducted by the Ionia County Health Department ("ICHHD") and the Michigan Department of Environment, Great Lakes and Energy ("EGLE") have revealed that TCICA has been handled in a dangerous, negligent and unlawful manner on lands in the I-1 District.
- (g) These same agencies have concluded that, based on the quantities of TCICA stored in the I-1 District at just one facility, a TCICA fire could, depending on wind direction, impact the entire City of Belding and neighboring municipalities, requiring an evacuation zone that might be six to seven miles long and 1.5 miles wide.
- (h) Based on the foregoing findings, the residents of the City are at substantial risk of being exposed to hazardous and toxic gases, if special local air pollution control regulations are not placed into effect to ensure the safe use and storage of TCICA in appropriate quantities.

Sec. 34-103. – Short Title

This Article of the City Ordinance Code may be cited and referred to as the City Air Pollution Control Ordinance ("APCO").

Sec. 34-104. – Authorization

This Article is authorized by state law, and by City Charter, as follows:

- (a) Pursuant to Section 3(j) of the Home Rule City Act, MCL 117.3(j), a home rule city is required to include in its charter, provisions providing for "the public peace and health and for the safety of persons and property."
- (b) Under Section 3.1(b) of its duly-enacted Charter, the City has been granted the authority to declare as a hazard or nuisance any act or condition, upon public or private property, or both, which is, or may be, dangerous to the health, safety and welfare of the inhabitants of the City.

- (c) Part 55 of the Natural Resources and Environmental Protection Act (“NREPA”), MCL 324.5501, *et seq.*, governing Air Pollution Control, expressly authorizes political subdivisions to adopt air pollution control standards that are more stringent than those established by Part 55, stating, in relevant part, as follows: “Nothing in this part or in any rule promulgated under this part . . . prevents any political subdivision from adopting similar provisions if their requirements are equal to or greater than the minimum applicable requirements of this part.” MCL 324.5542(1).

Sec. 34-105. – Definitions.

The following words, terms and phrases when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning. Any word or term not defined in this chapter shall be considered to be defined in accordance with its common or standard definition.

Acute Exposure Guideline Level 1 (“AEGL-1”) means the airborne concentration of a substance above which it is predicted that the general population, including susceptible individuals, could experience noticeable discomfort, irritation, or certain asymptomatic nonsensory effects; however, the effects are not disabling, and are transient and reversible upon cessation of exposure.

Acute Exposure Guideline Level 2 (“AEGL-2”) means the airborne concentration of a substance above which it is predicted that the general population, including susceptible individuals, could experience irreversible or other serious, long- lasting adverse health effects or an impaired ability to escape.

Acute Exposure Guideline Level 3 (“AEGL-3”) means the airborne concentration of a substance above which it is predicted that the general population, including susceptible individuals, could experience life-threatening health effects or death.

Manufacturing process means any activity involving a chemical or substance regulated under this Ordinance, including any use, storage, manufacturing, handling, or on-site movement of such substance, or combination of these activities.

Sec. 34-106. – Air Pollution Standards for TCICA

- (a) No person may engage in a manufacturing process on lands zoned in the I-1 District that involves TCICA if the manufacturing process would occur in a facility that is located a distance less than 1,320 feet (1/4-mile) from any residential property line or residential zoning district boundary line, unless prior approval has been obtained from the City Council.
- (b) Council approval under subsection (a) above shall not be granted unless the applicant has demonstrated that the total maximum quantity of TCICA to be used in a manufacturing process at the facility at any given time, if it underwent complete decomposition and released chlorine gas to the open atmosphere, would not cause a chlorine gas concentration at the nearest residential property line or residential zoning district boundary line that would exceed the chlorine AEGL-1, based on

atmospheric computer modeling conducted in accordance with the methodologies used by the IMAAC or other comparable methodology that meets applicable US EPA and EGLE guidance, including Appendix W to 40 CFR Part 51, and based on a ten-minute exposure duration.

- (c) It shall be a violation of this article for any person to release or cause the release, whether intentionally, negligently, carelessly, or inadvertently, of any quantity of chlorine gas into the atmosphere that causes a chlorine gas concentration at the nearest residential property line or residential zoning district boundary line that would exceed the chlorine AEGL-1, based on a ten-minute exposure duration.
- (d) It shall be a violation of this article for any person to release or cause the release of any air contaminant in a manner that would violate Rule 336.1901 of Michigan's Administrative Rules for Air Pollution Control, as promulgated under Part 55 of NREPA.

Sec. 34-107. – Application Process

- (a) A person seeking Council approval under Section 34-106(b) shall submit the following application information and materials to the City Clerk:
 - (1) The applicant's name, business address, e-mail address, and telephone number(s).
 - (2) The address, legal description and permanent parcel number of the property on which TCICA is proposed to be used and/or stored.
 - (3) A narrative describing the proposed manufacturing process that will involve TCICA.
 - (4) The maximum total quantity of TCICA to be used in a manufacturing process at the facility at any given time.
 - (5) A complete site plan of the property on which the manufacturing process involving TCICA is proposed to be performed. The site plan shall depict the distance, in feet, from the nearest wall of the facility to the nearest residential property line or residential zoning district boundary line in all directions. The scope and contents of the site plan shall otherwise be as stated in Section 16.1.C.3.b(1)(b) of the City zoning ordinance, except such elements or components thereof that are not relevant or necessary for the purpose of making a determination under Section 34-106(b).
 - (6) A complete copy of the atmospheric computer modeling conducted in accordance with the methodologies used by the IMAAC or other comparable methodology approved by the US EPA or EGLE, including a mapped description of the areas that would be above the chlorine AEGL-1, AEGL-2 and AEGL-3, if the total maximum quantity of TCICA in a manufacturing process at the facility at any given time underwent complete decomposition and released chlorine gas to the open atmosphere.

If the applicant relies on an atmospheric dispersion modeling methodology that is different from that used by the IMAAC, the applicant shall submit a technical demonstration that the modeling methodology meets applicable US EPA and EGLE guidance, including Appendix W to 40 CFR Part 51.

- (7) A regulatory and technical demonstration that any manufacturing process involving TCICA at the facility complies with the general duty requirements of the US EPA's accidental release provisions, as codified under Section 112(r)(1) of the federal Clean Air Act.
- (8) Unless otherwise exempt under Rules 336.1278 through 336.1292 of Michigan's Administrative Rules for Air Pollution Control, as promulgated under Part 55 of NREPA, a copy of an air use Permit to Install, issued by EGLE pursuant to Rule 336.1201, that stipulates emission limits, control requirements, testing, monitoring, and recordkeeping requirements determined by EGLE to be necessary to ensure the safe manufacturing, use, and/or storage of TCICA as a potential chlorine-generating constituent. The Permit to Install must be issued by EGLE no greater than six months prior to submittal of an application under this section.
- (9) The prescribed application fee, as determined by Council, and any required escrow deposit to reimburse the City for the reasonable expenses it may incur to obtain review of the application by third-party professionals such as engineers, air-modeling experts, attorneys, or other similar professionals. If the Clerk determines that an escrow deposit is needed to review an application, the Clerk shall notify the applicant of the amount of the required escrow deposit within 15 days after receipt of the application. The City may require additional escrow deposits if the cost of obtaining professional review of the application exceeds the amount of the initial deposit. Any unused portion of an escrow deposit shall be returned to the applicant after application processing has been completed.
- (b) Within 120 days of the filing of an administratively complete application, including applicable fees and escrow deposits, the City Council shall either deny, approve or approve with conditions the application. Written notice of the Council's decision shall be promptly sent by U.S. mail to the applicant, and, in the case of denial, the reasons for denial shall be included in the notice. The 120-day period for decision may be extended upon the written consent of the applicant.
- (c) If the City Council approves an application, the approved application shall state the maximum quantity of TCICA that the applicant can use in a manufacturing process at the facility at any given time (the "Approved Amount").
- (d) It shall be a violation of this article for any person to use a quantity of TCICA in a manufacturing process at a facility that is in excess of the facility's Approved Amount, as determined by the City Council.

Sec. 34-108. – Violations; Penalties

- (a) A violation of any provision of this article, including failure to obtain approval from the City Council under Section 34-106(b), is hereby declared to be a public nuisance.
- (b) A violation of any provision of this article, including failure to obtain approval from the City Council under Section 34-106(b), is a misdemeanor, subject to penalty for each violation as provided by Section 1-19(b).
- (c) In addition to any remedies provided by this section or otherwise available to the City at law, the City may bring an action for an injunction or initiate other available processes against a person to restrain, prevent or abate any violation of this article.

Section 2. Severability. Each portion of this Ordinance shall be deemed to be severable. Should any provision of this Ordinance be declared by a court of competent jurisdiction to be unconstitutional, invalid, or unenforceable, such holding shall not affect the validity or enforceability of this Ordinance as a whole, or of any other part hereof.

Section 3. Publication; Effective Date. A summary of the regulatory effect of this Ordinance shall be published in a newspaper of general circulation in the City within 15 days after adoption. This Ordinance shall become effective thirty (30) days after such publication.

ORDINANCE ADOPTED ON NOVEMBER 5, 2019

Kareen J. Thomas
City Clerk